Milwaukee Engraving Co., Inc. *and* Milwaukee Graphic Arts Health and Welfare Plan *and* Graphic Communications International Union, Local 577-M a/k/a GCIU Milwaukee-Madison Local 577-M a/k/a GCIU Southern Wisconsin 577-M. Cases 30–CA–13836 (formerly Case 20–CA–27908) and 30–CA–13837 (formerly Case 20–CA–27907)

March 31, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND BRAME

Upon charges filed by Graphic Communications International Union, AFL–CIO, CLC, Local 507-M on May 30, 1997, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on January 29, 1998, against Milwaukee Engraving Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On February 26, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On March 4, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that on February 3, 1998, the Respondent commenced proceedings under Chapter 11 of the Bankruptcy Code, in Case No. 98021027-MDM, in the United States Bankruptcy Court, Eastern District of Wisconsin. Although the Respondent is in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Milwaukee, Wisconsin, has been engaged in the wholesale graphic arts business. During the calendar year ending December 31, 1996, the Respondent, in conducting its business operations, sold and shipped from its Milwaukee, Wisconsin facility goods valued in excess of $50,000 directly to points outside the State of Wisconsin, purchased and received at its Milwaukee, Wisconsin facility goods and materials valued in excess of $50,000 directly to points outside the State of Wisconsin, and purchased and received at its Milwaukee, Wisconsin facility goods and materials valued in excess of $50,000 from other enterprises located within the State of Wisconsin, each of which other enterprises had received these goods and materials directly from outside the State of Wisconsin. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Until about April 1, 1992, Graphic Communications International Union, AFL–CIO, CLC, Local 277-M (Local 277-M) and Graphic Communications International Union, AFL–CIO, CLC, Local 507-M (Local 507-M) were labor organizations within the meaning of Section 2(5) of the Act. About that same date, Local 277-M merged with Local 507-M. Since about April 1, 1992, Local 577-M has been the successor to Local 277-M, and, at all material times since that date, Local 577-M has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent who were covered by the collective-bargaining agreement described below (the 1991–1994 Agreement) and all employees, artists who perform electronic prepress functions such as desk top publishing work;

excluding guards and supervisors as defined in the Act.

Prior to April 1, 1992, Local 277-M was the designated exclusive collective-bargaining representative of the unit and was recognized as the representative by the Respondent. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from May 1, 1991, through April 30, 1994 (the 1991–1994 agreement). Since about April 1, 1992, Local 577-M has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. At all material times, based on Section 9(a) of the Act, Local 577-M has been the exclusive collective-bargaining representative of the unit.

The 1991–1994 agreement contains provisions requiring the Respondent to make contributions to health and welfare, retirement, and education funds. Since about November 1996, the Respondent stopped contributing to the health and welfare fund and the retirement fund. Since about June 1997, the Respondent stopped contributing to the education fund. The Respondent engaged in this conduct without prior notice to Local 577-M and without affording Local 577-M an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct. Until at least December 1996, Local 577-M could not have learned or could not have been reasonably expected to learn that the Respondent was unilaterally repudiating its obligation to make contributions to the health and welfare fund and the retirement fund. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make required contributions to the health and welfare and retirement funds since about November 1996 and the education fund since about June 1997, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

ORDER

The National Labor Relations Board orders that the Respondent, Milwaukee Engraving Co., Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively with the exclusive collective-bargaining representative of its employees by stopping its required contributions to the health and welfare, retirement, and education funds.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the following unit employees by making all delinquent contributions it has failed to make to the health and welfare and retirement funds since about November 1996 and the education funds since about June 1997, in the manner set forth in the remedy section of this decision:

> All employees of the Respondent who were covered by the 1991–1994 Agreement and all employees, artists who perform electronic pre-press functions such as desk top publishing work; excluding guards and supervisors as defined in the Act.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Milwaukee, Wisconsin, copies of the

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 1996.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1998

William B. Gould IV, Chairman

Sarah M. Fox, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively with the exclusive collective-bargaining representative of our employees by stopping our required contributions to the health and welfare, retirement, and education funds.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole the following unit employees by making all delinquent contributions we have failed to make to the health and welfare and retirement funds since about November 1996 and the education fund since about June 1997, in the manner set forth in a decision of the National Labor Relations Board:

> All our employees who were covered by the collective-bargaining agreement with Graphic Communications International Union, AFL–CIO, CLC, Local 507-M and/or Local 277-M, effective from May 1, 1991, through April 30, 1994, and all employees, artists who perform electronic pre-press functions such as desk top publishing work; excluding guards and supervisors as defined in the Act.

MILWAUKEE ENGRAVING CO., INC.